IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4670 OF 2005

BABURAO SITARAM SHIBE .. PETITIONER

Versus

JAYSINGH KRISHNA SSHISBE & ANR.. RESPONDENTS

Mr. K. S. Patil for petitioner

Mr. Dilip Bodake for respondents

CORAM:-SMT.RANJANA DESAI,J.

DATED:-17/8/2005

P.C.

. The petitioner is original defendant 1. The plaintiff's suit is for declaration that he is the owner of the suit property and for perpetual injunction restraining the defendants from obstructing the plaintiff's peaceful possession and cultivation of the suit land. The plaintiff filed an application for temporary injunction which was allowed by the trial court. The trial court has restrained defendant 1 by an order of temporary injunction from causing any obstruction to the

possession of the plaintiff. The appeal carried by defendant 1 has been dismissed. Defendant 1 has challenged the said order in this writ petition.

2. I have heard the learned counsel appearing for the petitioner.

3. He drew my attention to the trial court's order wherein it is observed that in the 7/12 extract of the suit property the name of defendant 1 and 2 is appearing as owner and possessor. The learned counsel drew my attention to the judgment of the Supreme Court in Hanumanthappa v. Muninarayanappa, 1996 SOL Case No. 645 and contended that there cannot be injunction against owner of the suit property.

4. Both the courts have concurrently held that prima facie the plaintiff is in possession of the suit property. It appears that defendant 1 had also filed R.C.S. No. 81/75 for injunction but it was withdrawn by him.

5. It also appears that in the earlier suit defendant 1 had contended that the entire land belongs to him whereas in the present suit he has

contended that he has only one third share. In view of this prima facie concurrent finding of fact recorded by the courts below cannot be disturbed in my writ jurisdiction. The points urged by the learned counsel for the petitioner would obviously be taken into consideration at the final hearing of the suit.

6. There is no substance in the writ petition. Petition is rejected. However, in the circumstances of the case suit is expedited.

7. It is clarified that all observations made by me are prima facie observations.

(SMT. RANJANA DESAI, J.)